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Supreme Court, U.S.
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No. 99-1856

In The

# Supreme Court of the United States

MIAMI-DADE COUNTY, through its Manager and Board of County Commissioners,

*Petitioner,*

vs.

AGRIPOST, INC., a Florida Corporation, and AGRIDADE, LTD., a Florida Limited Partnership,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## REPLY BRIEF

HOLLAND & KNIGHT
701 Brickell Avenue
Suite 3000
Miami, Florida 33101-5441
Telephone: (305) 374-8500
Fax: (305) 789-7799

By: DANIEL S. PEARSON

ROBERT A. GINSBURG
*Counsel of Record*
Miami-Dade County Attorney
Suite 2810
111 Northwest First Street
Miami, Florida 33128-1993
Telephone: (305) 375-5151
Fax: (305) 375-5634

By: ROBERT LOWELL KRAWCHECK
JAMES J. ALLEN
Assistant County Attorneys

*Counsel for Petitioner, Miami-Dade County*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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## QUESTIONS PRESENTED

DOES THE ELEVENTH CIRCUIT'S EXCEPTION TO THIS COURT'S RULE AGAINST REVERSING STATE COURT JUDGMENTS PREVENT STATE COURTS FROM DECIDING WHETHER REGULATORY ACTIONS SHOULD BE REVERSED AS CONFISCATORY IN ORDER TO AVOID PERMANENT TAKINGS SUCH AS THE CLAIMED $140,000,000 TAKING IN QUESTION?

IF A FEDERAL COURT LACKS JURISDICTION OVER A FEDERAL REGULATORY TAKING CLAIM BECAUSE IT IS UNRIPE, DOES THE COURT NEVERTHELESS HAVE JURISDICTION TO ADJUDICATE PRECLUSION DEFENSES?

BY HOLDING THAT A STATE TAKING CLAIM WAS NEITHER BEFORE THE COURT NOR GERMANE, DID THE ELEVENTH CIRCUIT DEPRIVE THE COUNTY OF ITS RIGHT TO APPEAL THE DISTRICT COURT'S EXERCISE OF JURISDICTION OVER, AND ITS DISPOSITION OF, THE COUNTY'S DEFENSES TO THAT CLAIM?

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## STATEMENT OF THE CASE

Agripost's Statement of the Case consists largely of legal arguments pertaining to the state court adjudication of its taking claims, which arguments are discussed *infra*. Otherwise, Agripost extensively discusses (a) its contract claim, Br. at 1, 2, 5, which is immaterial because it is *not* involved in the Petition, and (b) its purported "cure-all," which was expressly rejected by the Florida court based upon Agripost's own admissions. App. 58. Significantly, Agripost does not dispute that it admitted creating a public health nuisance in violation of both of its conditional zoning approval and its conditional lease upon state lands. Pet. at 2-3.

## REASONS FOR GRANTING THE PETITION

**THIS CASE MERITS SUPREME COURT REVIEW BECAUSE THE ELEVENTH CIRCUIT OPINION (a) AUTHORIZES DISTRICT COURT JURISDICTION TO REVERSE STATE COURT ADJUDICATIONS, (b) PREVENTS STATE COURTS FROM DECIDING WHETHER REGULATORY ACTIONS SHOULD BE REVERSED AS CONFISCATORY IN ORDER TO AVOID PERMANENT TAKINGS SUCH AS THE CLAIMED $140 MILLION TAKING IN THE PRESENT CASE, (c) AUTHORIZES THE EXERCISE OF JURISDICTION WHERE SUBJECT MATTER JURISDICTION IS EXPRESSLY FOUND TO BE LACKING, AND (d) DENIES THE RIGHT OF APPEAL.**

**The Eleventh Circuit's decision is in clear conflict with Supreme Court case law.**

1) ***First English* – The Eleventh Circuit's peculiar definition of a Fifth Amendment taking claim creates a "Catch 22," undermining *First English*.**

Agripost erroneously argues that the conflict with *First English Evangelical Lutheran Church v. County of Los*

*Angeles*, 482 U.S. 304 (1987), is simply "a question of Florida law." Br. at 9. However, independent of Florida case law and the facts of this particular case, the Eleventh Circuit has established a "Catch 22" rule prohibiting the raising or adjudication of a taking claim during *any* state court zoning appeal. This deprives both property owners and the states of the right to have confiscatory zoning actions stricken and thereby prevent temporary takings from becoming permanent takings.

In order to hold that the Florida court did not adjudicate Agripost's Fifth Amendment taking claim, the Eleventh Circuit had to define a taking claim in such a peculiar way as to require Agripost or any other litigant to do the impossible. Agripost would have had to allege to the Florida court hearing its zoning appeal that *that very court* had *already* taken its property. The Eleventh Circuit held:

> Agripost had to have filed a pleading (with the *Circuit Court*) alleging the following:
>
> > The *Circuit Court*'s decision affirming the County's revocation of the permit effectively rendered Agripost's property . . . worthless [therefore] Agripost has a ripe Fifth Amendment takings claim.

App. at 13.

Agripost itself confirms that the Eleventh Circuit held that the Florida court *"could not have had* such a [peculiar] claim before it." Br. at 12. *See* Eleventh Circuit Op. at 14-16. At the same time, however, Agripost concedes that *"First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987), held that *State*

*courts have the power to strike down zoning actions that are confiscatory.*" Br. at 9. By the foregoing, Agripost itself has highlighted the "Catch 22" created by the Eleventh Circuit opinion and the ensuing conflict with *First English* that warrants Supreme Court review.

**2) *Rooker-Feldman* – The Eleventh Circuit's express exceptions to *Rooker-Feldman* eviscerate that doctrine.**

**(a) The Eleventh Circuit's exceptions to *Rooker-Feldman*.**

Unable to defend the Eleventh Circuit's express exception to *Rooker-Feldman*,[1] Agripost avoids it by misinforming the Court that the "Eleventh Circuit 'exception' to *Rooker-Feldman* [was not] involved." Br. at 11. This statement, of course, flies in the face of the record. *See* the District Court's express application of this "exception" at App. 29-30, and the Eleventh Circuit's recognition and affirmance of this holding based, *inter alia*, upon unripeness at App. 7, 11-14, 18.

Independent of Florida case law and the facts of this case, the Eleventh Circuit has created a new rule of law in conflict with Supreme Court case law. The Eleventh Circuit's exception to *Rooker-Feldman* permits district courts

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[1] The *Rooker-Feldman* doctrine provides that "a United States District Court has no authority to review final judgments of a state court in judicial proceedings." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). The doctrine extends to claims "inextricably intertwined" with the state court's judgment. *Feldman* at 483 n.16.

to exercise jurisdiction to effectively reverse state court adjudications of dispositive issues whenever a new claim ripens and, even more broadly, whenever a prior state adjudication did not "unambiguously dispose . . . of a federal constitutional *claim*." App. 6. *See* Pet. at 12. This effectively eviscerates *Rooker-Feldman* by allowing district court jurisdiction whenever (a) a new claim ripens, even though the essential elements of that claim have been previously adjudicated by the state court, and (b) whenever the prior adjudication either did not involve, or did not expressly decide, a federal constitutional claim.

**(b) The Florida court adjudicated Agripost's taking claim as a matter of both law and fact.**

As discussed, *supra*, the Eleventh Circuit has created new, sweeping precedents that transcend the particular facts and state law involved in this case. However, the Eleventh Circuit's effective reversal of Florida Supreme Court precedent, and its error as to the adjudication of Agripost's taking claims, in themselves, warrant review. This is so because of both the violation of fundamental principles of federalism, and the enormous financial consequences for the state of Florida, matters which Agripost seeks to minimize. *See* Br. at 8-9.

Try as it might, Agripost simply fails to rebut the County's showing that the taking claims were adjudicated by the Florida court. When stripped of its name-calling, Agripost's discussion of this issue relies on nothing but the very Eleventh Circuit opinion which the Petition demonstrates to be both erroneous and in conflict

with multiple Supreme Court decisions. While Agripost repeatedly accuses the County of misrepresenting that Agripost's taking claims were adjudicated by the Florida court, Br. 4, 5, 8, 11, it presents nothing to substantiate its false accusations and engages in the very kind of conduct which it condemns.

The County's Petition meticulously demonstrated that Agripost asserted to the state court a $30 million taking claim under both the United States and Florida Constitutions. Agripost argued that "[b]oth the Federal and State constitutions provide that the Legislature shall not take property without due process of law and just compensation." Pet. at 3, *citing* AF 3-31. The Petition also thoroughly documented how the $30 million taking claim was not only expressly recognized by the Court, Pet. at 4 *citing* App. 60, but also how the claim or its elements were both directly and necessarily adjudicated *as a matter of law* in no less than *four* separate ways by the Florida circuit pursuant to a Florida Supreme Court requirement to adjudicate taking claims. *See* Pet. at 16-21 and *Dade County v. National Bulk Carriers, Inc.*, 450 So.2d 213 (Fla. 1984).

Unable to refute even one of those four showings, Agripost merely bootstraps its conclusion using the Eleventh Circuit opinion, which, as discussed *supra*, defines a taking claim so peculiarly that no one could have raised it. On the one hand, Agripost even says that the County's analysis of the state court taking claim adjudications was never made. On the other hand, Agripost acknowledges that the argument *was* made and repeats its complaint that the County dares to disagree with the Eleventh Circuit. In its "Statement of the Case," Agripost argues:

> The Eleventh Circuit expressly held that no Florida court had ever adjudicated Agripost's taking claim or could have. *Dade sets forth no reason to show that holding was wrong but ignores it,* and writes as if the Florida state court had adjudicated the takings claim. Pet. 4.

Br. at 8. In its argument, Agripost contradicts itself:

> [P]*etitioner engages in a discussion of why the Florida State court "had rejected Agripost's taking claims,"* Pet. 16, in the teeth of the Eleventh Circuit's express holding that the Florida State court had no such takings claim before it, could not have had such a claim before it, and had made no such adjudication.

Br. at 12.

Agripost further argues in its "Statement of the Case" that the County "does not address either of the cases cited by the Eleventh Circuit to show that the takings claim could not have been raised" before the Florida court. Pet. at 5. This is patently untrue. *See* the Eleventh Circuit's discussion of *National Bulk Carriers,* and *Key Haven Associated Enterprises, Inc. v. Board of Trustees of the Internal Improvement Trust Fund,* 427 So.2d 153 (Fla. 1982), at App. 16-17, and the County's analysis of both these cases demonstrating the *facially apparent* error in the Eleventh Circuit's opinion, at Pet. 19-21. Moreover, Agripost's reliance, in its Statement of the Case, upon *Albrecht v. State,* 444 So.2d 8 (Fla. 1984), highlights the error of its argument. *Albrecht,* like *Key Haven,* was expressly distinguished by the Florida Supreme Court in *National Bulk* as

inapplicable to a Dade County unusual use zoning resolution, the identical kind of zoning action involved in the present case. 450 So.2d 213 at 216.

Agripost further misinforms this Court as follows:

> The *Florida cases* cited by the three-judge Florida opinion went to the question of . . . *substantial competent evidence* . . . *not to any takings claim*, as the Eleventh Circuit expressly found.

Contrary to Agripost's representations and the asserted Eleventh Circuit finding, those cases had nothing to do with the substantial competent evidence rule and everything to do with the Florida court's rejection of Agripost's taking claim.

The case of *Smalleylogics Corp. v. Dade County*, 176 So.2d 574 (Fla. 3d DCA 1975), cited by the Florida court at App. 58 and discussed in the County's Petition at 17, involved a property owner's contention that it had "a substantial *vested property right* in" a Miami-Dade County conditional zoning approval. 176 So.2d 574, 577. The Florida Court held that under Florida law the owner "cannot now claim that he can violate the conditions without forfeiting his right to the conditional [zoning approval]." *Id.* at 578. Similarly, the case of *Jefferson National Bank at Sunny Isles v. Metropolitan Dade County*, 271 So.2d 207 (Fla. 3d DCA 1972), was cited by the Florida court at App. 59 to negate Agripost's estoppel claim. As demonstrated in the Petition, estoppel is the equivalent of a taking of a vested property right under Florida zoning law. Pet. at 19 n.11.

**3) *Lucas* – The Eleventh Circuit opinion negates the "takings" principles of *Lucas*.**

In *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 2899 (1992), this Court reaffirmed traditional state and federal case law recognizing the truism that one cannot assert a taking for the alleged deprivation of rights that were "not part of his title to begin with." Although there is nothing new about this holding, Agripost would have this Court accept that because *Lucas* was decided after the Florida circuit court opinion, the Florida circuit court could not have applied the time-honored principles recognized therein. Br. at 10.

Contrary to Agripost's distortion, the County does not contend that the Florida court relied upon *Lucas*, itself, but upon the pre-existing state and federal law confirmed therein. Furthermore, the Eleventh Circuit's subsequent rejection of the Florida adjudication, which adjudication was predicated upon these longstanding legal principles, *does* conflict with *Lucas* itself. Finally, the Eleventh Circuit's disallowance of a state court's right to reverse confiscatory zoning and avoid a permanent taking establishes a second, independent conflict with *Lucas*. *See* 112 S. Ct. at 2901, n.17, Pet. at 8.

**4) *Williamson County* – The exercise of jurisdiction where it is found to be lacking is the antithesis of *Williamson County*.**

Perhaps the most patent conflict of the Eleventh Circuit opinion is with the case of *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985), which holds that a district court lacks subject matter

jurisdiction altogether over an unripe taking claim. Understandably, Agripost wishes to avoid this patent conflict by labeling it "not relevant," Br. at 10, and by distorting the issues raised by the Petition as involving standing and *appellate* jurisdiction as opposed to district court jurisdiction. Br. at 12-13.

The Eleventh Circuit affirmed as to both the district court's *lack* of jurisdiction over the taking claim and that court's *exercise* of jurisdiction over the County's defenses to that very claim. *See* App. 10, n.11. This is in clear conflict with both *Williamson County* and the Supreme Court's strict holdings that lack of jurisdiction deprives the district court of the power to adjudicate the merits. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998), discussed at Pet. 22. Not only are *Williamson County* and *Steel Company* highly relevant, but also they underscore the clear, unequivocal conflict of the Eleventh Circuit opinion with Supreme Court case law on a matter of great importance going both to the essence of a federal district court's power and to the foundation of our constitutional, federal structure of government. Moreover, the improper exercise of jurisdiction enabled by this conflict leads directly to, and exacerbates, the additional conflicts with *First English*, *Rooker-Feldman*, and *Lucas* discussed *supra*.

Finally, Agripost's contention that because the case was ultimately dismissed without prejudice it is of little consequence, Br. at 8, runs directly counter to Agripost's own cited cases of *Disher v. Information Resources, Inc.*, 873 F.2d 136, 138-39 (7th Cir. 1989) and *Grayson v. K-Mart Corp.*, 79 F.3d 1086, 1095 n.10 (11th Cir. 1996), Br. at 13,

which recognize the aggrievement of a party in having to face repeated litigation.

## CONCLUSION

In opposing certiorari review, Agripost finds nothing to rely upon other than the demonstrably erroneous and conflicting Eleventh Circuit opinion itself. This is perhaps the best indication that the conflicts identified by the Petition are both real and significant. If allowed to stand, the opinion will condone a vast expansion of federal district court jurisdiction in conflict with multiple Supreme Court decisions, all to the prejudice of both Miami-Dade County and innumerable other state and local governments.

Respectfully submitted,

HOLLAND & KNIGHT
Suite 3000
701 Brickell Avenue
Miami, Florida 33101-5441
Phone: (305) 374-8500

DANIEL S. PEARSON
Florida Bar Number 062079

ROBERT A. GINSBURG
Miami-Dade County
Attorney
Suite 2810
111 Northwest First Street
Miami, Florida 33128-1993
Phone: (305) 375-3771
Fax: (305) 375-5634

ROBERT L. KRAWCHECK
Florida Bar Number 128019

*and*

JAMES J. ALLEN
Florida Bar Number 317861